

DIVISION 2 — SURVIVORSHIP RULES

Fundamental rule — when persons die simultaneously

5 (1) If 2 or more persons die at the same time or in circumstances that make it uncertain which of them survived the other or others, unless a contrary intention appears in an instrument, rights to property must be determined as if each had survived the other or others.

(2) If

- (a) two or more persons hold property as joint tenants, or hold a joint account, and
- (b) both or all of them die at the same time or in circumstances that make it uncertain which of them survived the other or others,

unless a contrary intention appears in an instrument, for the purpose of determining rights to property, each person is deemed to have held the property or account as tenants in common with the other or with each of the others.

General presumption — disposition of property on simultaneous deaths

6 If

- (a) an instrument provides for the disposition of property in the event that a person named in the instrument
 - (i) dies before another person,
 - (ii) dies at the same time as another person, or
 - (iii) dies in circumstances that make it uncertain which of them survived the other, and
- (b) the named person dies at the same time as the other person or in circumstances that make it uncertain which of them survived the other,

for the purpose of that disposition, the event for which the instrument provides is conclusively deemed to have occurred.

General presumption — substitute personal representative

7 If

- (a) a will provides for a substitute personal representative in the event that an executor named in the will
 - (i) dies before the will-maker,
 - (ii) dies at the same time as the will-maker, or
 - (iii) dies in circumstances that make it uncertain which of them survived the other, and

(b) the named executor dies at the same time as the will-maker or in circumstances that make it uncertain which of them survived the other,

for the purpose of the grant of probate, the event for which the will provides is conclusively deemed to have occurred.

Posthumous births

8 Descendants and relatives of an intestate, conceived before the intestate's death but born after the intestate's death and living for at least 5 days, inherit as if they had been born in the lifetime of the intestate and had survived the intestate.

Posthumous births if conception after death

8.1 (1) A descendant of a deceased person, conceived and born after the person's death, inherits as if the descendant had been born in the lifetime of the deceased person and had survived the deceased person if all of the following conditions apply:

(a) a person who was married to, or in a marriage-like relationship with, the deceased person when that person died gives written notice, within 180 days from the issue of a representation grant, to the deceased person's personal representative, beneficiaries and intestate successors that the person may use the human reproductive material of the deceased person to conceive a child through assisted reproduction;

(b) the descendant is born within 2 years after the deceased person's death and lives for at least 5 days;

(c) the deceased person is the descendant's parent under Part 3 of the *Family Law Act*.

(2) The right of a descendant described in subsection (1) to inherit from the relatives of a deceased person begins on the date the descendant is born.

(3) Despite subsection (1) (b), a court may extend the time set out in that subsection if the court is satisfied that the order would be appropriate on consideration of all relevant circumstances.

Survival of beneficiaries

9 (1) If

(a) a right of a beneficiary to receive property is conditional on the beneficiary surviving another person, and

(b) the beneficiary dies at the same time as the other person or dies in circumstances that make it uncertain which of them survived the other,

the beneficiary is conclusively deemed to have predeceased the other person.

(2) If

- (a) property is left to 2 or more beneficiaries or to the surviving beneficiary or beneficiaries, and
- (b) both or all die at the same time or in circumstances that make it uncertain which of them survived the other or others,

unless a contrary intention appears in an instrument, the property must be divided into as many equal shares as there are beneficiaries, and the shares must be distributed respectively to those persons who would have been entitled to a share in the event that each of the beneficiaries had survived.

Five-day survival rule

10 (1) A person who does not survive a deceased person by 5 days, or a longer period provided in an instrument, is conclusively deemed to have died before the deceased person for all purposes affecting the estate of the deceased person or property of which the deceased person was competent to give by will to another.

(2) If 2 or more persons hold property as joint tenants, or hold a joint account, and

(a) in the case of 2 persons, it cannot be established that one of them survived the other by 5 days,

(i) one half of the property passes as if one person survived the other person by 5 days, and

(ii) one half of the property passes as if the other person referred to in subparagraph (i) had survived the first person referred to in subparagraph (i) by 5 days, and

(b) in the case of more than 2 persons, it cannot be established that at least one of them survived the others by 5 days, the property must be divided into as many equal shares as there are joint tenants or persons holding the joint account, and the shares must be distributed respectively to those persons who would have been entitled to a share in the event that each of the persons had survived.

(3) This section does not apply to the appointment of a personal representative in a will.

(4) Nothing in this section affects the law of resulting trusts.

Priority of *Insurance Act* provisions

11 This Division does not apply to insurance money to which section 83 [*simultaneous deaths*] or 130 [*simultaneous deaths*] of the *Insurance Act* applies.